(5)

Office-Supreme Court, U.S.
FILED
MAY 6 1985
ALEXANDER L. STEVAS

No. 84-732

In the Supreme Court of the United States

OCTOBER TERM, 1984

THEODORE CLEAVINGER, ET AL., PETITIONERS

v.

DAVID SAXNER AND ALFRED CAIN, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONERS

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

KENNETH S. GELLER
Deputy Solicitor General

SAMUEL A. ALITO, JR.
Assistant to the Solicitor General

GLORIA C. PHARES
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

448P

QUESTION PRESENTED

Whether members of an Institution Discipline Committee, who adjudicate cases in which prison inmates are charged with rules infractions, are entitled to absolute immunity from personal damages liability for actions taken in that quasi-judicial capacity.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Summary of argument	10
Argument:	
Members of a prison institution discipline committee are entitled to absolute immunity from personal damages liability for actions taken in that quasi-judicial capacity	13
A. Judges and officials who perform quasi-judicial functions are entitled to absolute immunity	13
B. Institution discipline committee members perform a vital quasi-judicial function that would be seriously impaired without the protection of absolute immunity from personal damages liability	21
Conclusion	37

TABLE OF AUTHORITIES

Cases:

Anderson v. *Luther*, 521 F. Supp. 91	27
Barr v. *Matteo*, 360 U.S. 564	35
Baxter v. *Palmigiano*, 425 U.S. 320	7
Bivens v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388	6, 26, 35
Bradley v. *Fisher*, 80 U.S. (13 Wall.) 335	13, 14
Breedlove v. *Cripe*, 511 F. Supp. 467	27
Briscoe v. *LaHue*, 460 U.S. 325	16, 20, 22
Butz v. *Economou*, 438 U.S. 478	8, 16, 17, 22, 27, 29
Cavey v. *Levine*, 435 F. Supp. 475	27
Chapman v. *Kleindienst*, 507 F.2d 1246	25

Cases—Continued: Page

Chavis v. *Rowe*, 643 F.2d 1281, cert. denied, 454 U.S. 907 ..... 8, 25
Costello v. *United States*, 350 U.S. 359 17
Cruz v. *Skelton*, 502 F.2d 1101 19
Dawson v. *Smith*, 719 F.2d 896 33
Douglas v. *Muncy*, 570 F.2d 499 18
Evans v. *Dillahunty*, 711 F.2d 828 18
Gerstein v. *Pugh*, 420 U.S. 103 30
Gregoire v. *Biddle*, 177 F.2d 579, cert. denied, 339 U.S. 949 27
Harlow v. *Fitzgerald*, 457 U.S. 800 ..... 10, 16, 22, 27, 34
Hayes v. *Thompson*, 637 F.2d 483 25
Heckler v. *Chaney*, No. 83-1878 (Mar. 20, 1985) 20
Hewitt v. *Helms*, 459 U.S. 460 ..... 23, 26, 30
Hudson v. *Palmer*, No. 82-1630 (July 3, 1984) 23
Imbler v. *Pachtman*, 424 U.S. 409 ..... *passim*
Ingraham v. *Wright*, 430 U.S. 651 34
Jackson v. *Carlson*, 707 F.2d 943, cert. denied, 464 U.S. 861 33
Jihaad v. *O'Brien*, 645 F.2d 556 27
Johnson v. *Avery*, 393 U.S. 483 33
Johnson v. *Wells*, 566 F.2d 499 18
Jones v. *North Carolina Prisoners' Labor Union*, 433 U.S. 119 23
King v. *Higgins*, 702 F.2d 18, cert. denied, 464 U.S. 965 27
King v. *Wells*, No. 83-1705 (6th Cir. Apr. 12, 1985) 27
Kyle v. *Hanberry*, 677 F.2d 1386 33
Lawn v. *United States*, 355 U.S. 339 17
Mary & Crystal v. *Ramsden*, 635 F.2d 590 ..... 6, 25, 33, 35
McAlester v. *Brown*, 469 F.2d 1280 16
Pell v. *Procunier*, 417 U.S. 817 23
Pierson v. *Ray*, 386 U.S. 547 ..... 13, 15
Pope v. *Chew*, 521 F.2d 400 19
Powell v. *Irving*, 684 F.2d 494 18
Prieser v. *Rodriguez*, 411 U.S. 475 32
Procunier v. *Navarette*, 434 U.S. 555 21

Cases—Continued: Page

Real v. *Superintendent, Massachusetts Correctional Institution*, 390 Mass. 399, 456 N.E.2d 1111, cert. granted *sub nom. Ponte* v. *Real*, No. 83-1329 (Oct. 1, 1984) 7
Redding v. *Fairman*, 717 F.2d 1105, cert. denied, No. 83-980 (Feb. 21, 1984) 8, 25
Riley v. *Smith*, 570 F. Supp. 522 27
Segarra v. *McDade*, 706 F.2d 1301 27
Sellars v. *Procunier*, 641 F.2d 1295, cert. denied, 454 U.S. 1102 18
Spalding v. *Vilas*, 161 U.S. 483 ..... 26, 35
Stump v. *Sparkman*, 435 U.S. 346 ..... 13, 15, 16, 21, 29
Taylor v. *Kavanagh*, 640 F.2d 450 27
Thompson v. *Burke*, 556 F.2d 231 18-19
Trotter v. *Klincar*, 748 F.2d 1177 18
United States v. *Calandra*, 414 U.S. 338 17
United States ex rel. Powell v. *Irving*, 684 F.2d 494 18
Ward v. *Johnson*, 690 F.2d 1098 ..... 22, 27, 28, 33, 36
Wolff v. *McDonnell*, 418 U.S. 539 ..... *passim*
Wood v. *Strickland*, 420 U.S. 308 ..... 33, 34, 35
Yaselli v. *Goff*, 12 F.2d 396, aff'd, 275 U.S. 503 19

Constitution, statutes, regulation and rule:

U.S. Const.:
Amend I 6
Amend IV 6
Amend V 6, 7
Due Process Clause 26
Amend VI 6
Amend VIII 6
Administrative Procedure Act, 5 U.S.C. (& Supp. I) 551 *et seq.* 17
Equal Access to Justice Act, 28 U.S.C. 2412 8
28 U.S.C. 2241 ..... 12, 32
42 U.S.C. 1983 ..... 15, 33, 34
28 C.F.R.:
Pt. 541:
Sections 541.10-541.23 31
Section 541.15 31

Regulation and rule—Continued:	Page
Section 541.16(b)	3, 31
Section 541.16(c)	22
Section 541.17(a)	31
Section 541.17(c)	32
Section 541.17(d)	32
Section 541.17(g)	32
Section 541.19	5, 32
Section 541.20	3
Pt. 542	32
Fed. R. Crim. P.:	
Rule 6(e)(2)	17
Rule 6(e)(3)	17
Miscellaneous:	
Administrative Office, U.S. Courts, *Director's Annual Report* (1984)	25
Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 Yale L.J. 506 (1963)	35
Note, *Prisoners' Remedies for Mistreatment*, 59 Yale L.J. 800 (1950)	35
W. Prosser, *Law of Torts* (4th ed. 1971)	35

In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-732

THEODORE CLEAVINGER, ET AL., PETITIONERS

v.

DAVID SAXNER AND ALFRED CAIN, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 727 F.2d 669. The opinions of the district court reinstating petitioners as defendants in this action (J.A. 23-24) and denying petitioners' motion for judgment notwithstanding the verdict (Pet. App. 27a-34a) are unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 35a) was entered on February 13, 1984. A petition for rehearing was denied on June 8, 1984 (Pet. App. 36a). On August 27, 1984, Justice Stevens extended

the time for filing a petition for a writ of certiorari to and including November 5, 1984. The petition was filed on that date and was granted on February 19, 1985 (J.A. 102).

STATEMENT

1. In January 1975, prisoners in the federal correctional institution at Terre Haute, Indiana, engaged in a two-day strike to protest an inmate's death in the prison hospital (Pet. App. 2a). On February 14, 1975, respondents, who were inmates at Terre Haute, were cited in separate incident reports with encouraging other prisoners to engage in another work stoppage (*id.* at 3a; J.A. 50, 52).[1] The following day, each respondent received a copy of the incident report as required by the Bureau of Prisons Policy Statement (BOP Policy Statement) 7400.5C (Oct. 4, 1974) (J.A. 25-49; Pet. App. 3a; J.A. 36, 50, 52). In accordance with Bureau of Prisons practice (*id.* at 34-35), respondent Saxner was given and signed a notice explaining his rights at the disciplinary hearing to be held before the Institution Discipline Committee (IDC).[2] These rights included the right to advance written notice of the charge, the right to be represented by a staff member of his choice, and the right, except where institutional safety would be impaired, to attend the hearing, to present testimony and documentary evidence, and to receive a

[1] Respondent Saxner was serving a four-year sentence for smuggling marijuana, and respondent Cain was serving a five-year sentence for conspiracy to violate the firearms laws (see I Tr. 4, 98).

[2] The record does not reflect whether respondent Cain received a similar notice at that time (Pet. App. 3a).

written explanation of the IDC's decision. Pet. App. 3a; J.A. 54; see *id.* at 36-38. Following issuance of the incident reports, respondents were placed in administrative segregation (Pet. App. 4a).[3]

Respondent Saxner appeared before the IDC on February 21, 1975. On that day, the IDC was composed of petitioner Cleavinger, an associate warden; petitioner Marcadis, a correctional supervisor; and petitioner Lockett, chief of case management. Pet. App. 3a.[4] Saxner was accompanied by a staff counselor, Ralph Smith, whom Saxner had selected to represent him at the hearing. After reading the charge and reviewing Saxner's rights, the IDC introduced the incident report and three documents found in Saxner's cell. The first document (J.A. 91) was a cover letter from Saxner to Arpiar Saunders of the National Prison Project acknowledging that Saxner had written an enclosed "press release" entitled "Prisoners at Terre Haute Seek an Investigation" (*id.* at 81). Among other things, the press release advocated administrative approval of a prisoners union and amnesty for those who had participated in the strike (*id.* at 84). The letter also requested that Saunders keep an "important" enclosed memo entitled "Ideals and Proposals of the Prisoner Labor

[3] Administrative segregation results in a prisoner's temporary removal from the general inmate population (II Tr. 226; 28 C.F.R. 541.20).

[4] IDCs at Terre Haute were generally composed of three members. By regulation, at least two were senior correctional officers with the rank of department head or higher. The third member was normally a less senior member of the correctional staff. Staff members who witnessed the incident were excluded from membership on the IDC unless application of that rule would preclude the impanelling of a tribunal (Pet. App. 3a n.3; J.A. 26 ¶ 4; see 28 C.F.R. 541.16(b)).

Union" (*id.* at 93). At the hearing, Saxner admitted that he had written the press release and had mailed it to persons outside the prison without authorization (*id.* at 60, 71). No guards or inmates were called as witnesses, but Saxner was permitted to testify on his own behalf and to introduce affidavits of several inmates. Pet. App. 3a. The IDC denied Saxner's request to permit certain inmates to testify that he had not encouraged them to stop working, because their testimony would have been cumulative (*id.* at 3a n.4).

After adjourning and considering the evidence, the IDC found respondent Saxner guilty of encouraging a work stoppage, in violation of prison Rule 255 (J.A. 30, 57). In addition, based upon the documents found in Saxner's cell and his admissions at the hearing, Saxner was also found guilty of unauthorized use of the mail, in violation of Rule 701 (*id.* at 31, 47), and possession of contraband (*i.e.*, inflammatory material advocating an illegal prison union), in violation of Rule 208 (*id.* at 30, 57). The IDC ordered that Saxner be placed in administrative detention and forfeit 84 days of "good time" and recommended his transfer to another institution. Pet. App. 4a; J.A. 57.[5]

Respondent Cain's IDC hearing occurred the same day before the same officers (Pet. App. 4a). He was represented at the hearing by staff representative J.R. Alvarado (J.A. 64). The IDC advised Cain of

[5] Respondent Cain was assigned the last cell in L-Block, the unit that ordinarily housed those in administrative detention. As a result, respondent Saxner was assigned to the first cell in G-Block, the unit usually reserved for disciplinary segregation but used for administrative detention when L-Block was full (II Tr. 234-235). After seven days, when space became available, Saxner was moved to L-Block (I Tr. 46).

his rights and then produced the incident report, which contained the particulars of the work stoppage charge. Two documents found in Cain's cell—Saxner's letter to Saunders and the manuscript "Ideals and Proposals of the Prisoner Labor Union"—were also introduced. Pet. App. 4a; J.A. 81, 91. Cain testified and denied that he had encouraged other inmates not to work. He also demanded the opportunity to cross-examine his accusers. I Tr. 102, 104, 105. No other witnesses were called. At the conclusion of the hearing, the IDC found Cain guilty of encouraging a work stoppage and of possessing contraband, *i.e.*, "inflammatory material * * * supporting disruptive conduct in the institution." Pet. App. 4a; J.A. 65. The IDC ordered that Cain be confined in administrative segregation and forfeit 96 days of good time and recommended his transfer to another institution. *Ibid.*

2. In accordance with the BOP Policy Statement (J.A. 40 ¶ 10; see 28 C.F.R. 541.19), each respondent was informed of his appeal rights at the conclusion of the IDC hearing (Pet. App. 4a). Respondents appealed the IDC decisions to the warden, who provided virtually all of the relief they requested. The warden ordered respondents' release from administrative segregation, restored the forfeited good time, and directed that respondents' records carry a notation that the incident should not adversely affect their consideration for parole. Both respondents were released into the general prison population on March 21, 1975 (I Tr. 60; J.A. 75). The warden refused, however, to expunge respondents' records. Pet. App. 4a; I Tr. 61, 62, 123; J.A. 74, 77.

In accordance with the further appeal provisions of the BOP Policy Statement (J.A. 41), respondents appealed this one adverse ruling to the Regional Di-

rector of the Bureau of Prisons, and in April 1975, based upon the Regional Office's recommendation, the records of both respondents were expunged. Pet. App. 4a-5a; J.A. 79, 80. Respondent Saxner was paroled and released in April 1975; respondent Cain was granted parole in June 1975 and released in December 1975 (I Tr. 63, 125).

3. Meanwhile, in March 1975, respondents had brought suit in the United States District Court for the Southern District of Indiana against petitioners and other prison officials in their individual capacities.[6] Respondents' complaint, as amended, alleged that the defendants had violated respondents' rights under the First, Fourth, Fifth, Sixth, and Eighth Amendments (J.A. 12-22). See *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Respondents sought declaratory and injunctive relief and a total of $75,000 in compensatory damages (Pet. App. 5a; J.A. 22).

Prior to trial, the district court granted petitioners' motion to dismiss the complaint on the ground that their function as IDC hearing officers entitled them to absolute immunity from personal damages liability. Nearly two years later, however, the court reinstated the suit in light of the Seventh Circuit's decision in *Mary & Crystal* v. *Ramsden*, 635 F.2d 590 (1980), which held that members of a disciplinary committee at a state juvenile facility were entitled to only qualified immunity. Pet. App. 5a; J.A. 23-24.

After reinstatement of the complaint, the case was tried to a jury in April 1981. In response to special interrogatories, the jury found that petitioners had

[6] Also named as defendants were the warden (Charles Benson) and the administrative supervisor (C.D. Wilson) (Pet. App. 3a n.3).

violated respondents' Fifth Amendment due process rights. Pet. App. 5a.[7] The jury awarded each respondent $4500 as compensatory damages (*id.* at 5a, 30a).

The district court denied petitioners' motion for judgment notwithstanding the verdict (Pet. App. 27a-34a). The court appears to have found (*id.* at 29a-30a) that respondents' due process rights had been violated because (1) respondents were found guilty of infractions for which they had not received prior notice, (2) respondents were not allowed to call certain witnesses, and (3) the IDC relied on hearsay in support of the charges. Petitioners appealed, contending among other things that they were entitled to absolute immunity.[8]

[7] Judgment was entered in favor of the other defendants (see note 6, *supra*). Respondents did not contest this aspect of the judgment on appeal.

[8] The sole question raised in our petition is whether IDC members are entitled to absolute immunity. We have not challenged—but do not concede—that petitioners violated any clearly established constitutional rights. As noted above, the judgments against petitioners were apparently based on three alleged violations of due process. One of these—the failure to call live witnesses in support of the charges (see Pet. App. 30a)—was no violation at all. *Baxter* v. *Palmigiano*, 425 U.S. 308, 320-323 (1976); *Wolff* v. *McDonnell*, 418 U.S. 539, 567-569 (1974). The district court also appeared to fault the IDC (Pet. App. 29a-30a) for refusing to permit respondents to call defense witnesses whose testimony the IDC believed would be cumulative. This ruling did not constitute a clear violation of the holding in *Wolff* (418 U.S. at 566) that inmates charged with disciplinary infractions "ordinarily" must be given "the right to present evidence" but do not possess "the unrestricted right to call witnesses from the prison population." Compare *Real* v. *Superintendent, Massachusetts Correctional Institution*, 390 Mass. 399, 456 N.E.2d 1111 (1983) (due process

4. The court of appeals affirmed by a divided vote (Pet. App. 1a-26a). The majority opinion, written by Judge Wood and joined by Judge Cudahy, held (*id.* at 1a-2a) that petitioners' claim of absolute immunity was foreclosed by prior Seventh Circuit decisions denying such immunity to state correctional officers serving in a similar capacity. See *Redding* v. *Fairman*, 717 F.2d 1105, 1117 (1983), cert. denied, No. 83-980 (Feb. 21, 1984); *Chavis* v. *Rowe*, 643 F.2d 1281, 1288, cert. denied, 454 U.S. 907 (1981); *Mary & Crystal* v. *Ramsden*, *supra*.[9]

Judge Celebrezze, sitting by designation, dissented. In his view, the court of appeals failed to follow this Court's analysis of the absolute immunity issue in *Butz* v. *Economou*, 438 U.S. 478 (1978). Under

---

requires support in record of prison disciplinary proceeding for denial of prisoner's request to call witnesses), cert. granted *sub nom. Ponte* v. *Real*, No. 83-1329 (Oct. 1, 1984).

The final defect found by the district court was the IDC's failure to provide adequate notice of the charges of possessing contraband and unauthorized use of the mail. But while an inmate's right to 24 hours' notice of disciplinary charges was established in *Wolff*, it is at least arguable that *Wolff* does not apply to the situation here. In this case, the evidence supporting the new charges was originally introduced to prove the charges in the incident reports. Respondent Saxner then admitted that he had committed the additional offenses; and in any event, respondents' possession of the documents was essentially incontrovertible. Moreover, the new charges were no more serious than those in the incident reports, and there is no indication that the new charges resulted in the imposition of any additional punishment.

[9] The court of appeals also stated (Pet. App. 7a) that the damages awards might be "somewhat excessive," but it refused to disturb them. In addition, the court rejected respondents' cross-appeal of the district court's order denying them attorney's fees under the Equal Access to Justice Act, 28 U.S.C. 2412 (Pet. App. 7a-9a).

Economou, Judge Celebrezze contended, an official is entitled to absolute immunity if (1) his decisions are "functionally comparable" to those of a judge, (2) the controversies he resolves are "sufficiently intense to spawn harassing or intimidating litigation," and (3) "the adjudicatory process over which the official presides contains sufficient safeguards to lessen the 'need for individual suits to correct constitutional error' " (Pet. App. 18a-19a (footnote omitted), quoting *Economou*, 438 U.S. at 512).

IDC members, Judge Celebrezze maintained, meet all of these requirements. He noted (Pet. App. 22a) that they perform "the classic judicial function" of "determin[ing] whether an accused person is guilty or innocent of the charges brought against him." He also pointed out (*id.* at 23a) that IDC members face a severe threat of harassing or intimidating litigation, since "[t]he ability of prisoners to generate litigation is substantial and well documented." Finally, he argued (*ibid.*) that IDC procedures are sufficiently formal to assure that any constitutional error will either be avoided entirely or corrected in the course of the proceeding.

In response to Judge Celebrezze's dissent, the majority opinion stated (Pet. App. 2a n.2) that it "recognize[d] and respect[ed]" his "thoughtful contrary analysis" and added: "His arguments suggest that in due time the issue may merit reconsideration in this circuit." In view of this statement in the majority opinion, Judge Cudahy wrote a concurring opinion in support of the prior Seventh Circuit decisions (Pet. App. 10a-16a). Judge Cudahy stated (*id.* at 10a) that the activities and procedures of the IDC officers are "so dissimilar in form and substance from those of judges granted absolute immunity that reli-

ance on an all-encompassing similarity of quasi-judicial function will not wash." He argued (*id.* at 10a-12a) that IDC proceedings lack the procedural formality of judicial and agency adjudicative proceedings. He also contended (*id.* at 14a-15a) that "[i]t would be poor policy to extend absolute immunity to these defendants" because "they are accorded adequate protection against harassment by the enlarged safeguards of qualified immunity as announced in *Harlow* [v. *Fitzgerald*, 457 U.S. 800 (1982)]."

Petitioners' request for rehearing en banc was denied, with four of the nine active judges voting for en banc review (Pet. App. 36a).

SUMMARY OF ARGUMENT

When a federal inmate is charged with a serious infraction of prison rules, the charges are adjudicated by an Institution Discipline Committee, a three-person tribunal composed of specially trained senior prison officials. IDC members unquestionably perform a quasi-judicial role. Accordingly, they are entitled to absolute immunity against suits for damages.

This Court has long held that judges are absolutely immune for judicial acts falling broadly within their jurisdiction. This immunity applies regardless of the judge's alleged motives, the correctness of his actions, or the informality of the procedures. Judges must decide difficult and controversial cases that arouse intense feelings in the litigants. If disappointed litigants could sue for damages based on perceived defects in the court proceedings, the burden of defending such suits and the risk of an adverse judgment would be intolerable. Fearless and independent decisionmaking would be subverted.

This Court has also recognized that certain individuals, such as grand jurors and administrative law judges, perform functions comparable to those of a judge and face an equivalent threat of harassing or retaliatory litigation. Consequently, they too are clothed in absolute immunity from personal damages liability. Likewise, other essential participants in the judicial process, such as prosecutors and witnesses, have absolute immunity because liability to suit for damages would undermine the proper performance of their sensitive and important responsibilities.

These precedents amply support absolute immunity for IDC members. IDC members indisputably perform a quasi-judicial function: they adjudicate cases and in doing so must receive proof, assess the credibility of witnesses, weigh the evidence, and render a final written decision.

IDC adjudications play a vital role in maintaining prison discipline and security and thus in protecting both inmates and staff. Performance of this arduous and thankless task would be immeasurably more difficult if members of disciplinary tribunals were subject to suit for damages for their every procedural misstep. Prison discipline often arouses intense emotions; prisoners are prodigious litigators; and the flexible nature of due process requirements in the prison disciplinary setting offers substantial latitude for the assertion of due process claims. In addition, prison officials generally have modest financial resources. Hence, if IDC members could be held personally liable for damages few prison officials would willingly serve; fair and disinterested adjudication would be gravely compromised; and institutional order and safety would be jeopardized.

It is true that IDC proceedings lack some of the procedural attributes of trials and formal adminis-

trative adjudications. But this Court has recognized that the practicalities of prison administration justify more informal procedures. The Court has also recognized that an adjudication is no less judicial or quasi-judicial, and thus no less deserving of absolute immunity, because practical considerations require expeditious action or procedural informality. Thus, judges conducting summary proceedings, such as issuance of a search warrant or temporary restraining order, are entitled to absolute immunity, as are grand jurors and prosecutors.

In any event, IDC proceedings contain many safeguards to ensure fair adjudication. An inmate has the right to notice and the assistance of a lay advocate and the right to attend the proceedings and to put on a defense. A detailed record of the proceedings is kept; the IDC hands down a written decision; and the inmate is entitled to three levels of administrative review and to court review under 28 U.S.C. 2241. These remedies are sufficient to protect inmates' procedural rights and obviate any need for an additional damages remedy against IDC members.

Finally, IDC members need absolute, not just qualified immunity, for the same reasons as judges and other officials who perform quasi-judicial roles. Qualified immunity would provide inadequate protection against the severe burdens and risks of litigation faced by IDC members, and would be insufficient to ensure proper functioning of the prison disciplinary system.

ARGUMENT

MEMBERS OF A PRISON INSTITUTION DISCIPLINE COMMITTEE ARE ENTITLED TO ABSOLUTE IMMUNITY FROM PERSONAL DAMAGES LIABILITY FOR ACTIONS TAKEN IN THAT QUASI-JUDICIAL CAPACITY

A. Judges And Officials Who Perform Quasi-Judicial Functions Are Entitled To Absolute Immunity

1. "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." *Pierson* v. *Ray*, 386 U.S. 547, 553-554 (1967). This Court recognized the pressing need for such immunity more than a century ago, holding that judges are absolutely immune for their judicial conduct unless they act in the "clear absence of all jurisdiction." *Bradley* v. *Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." *Stump* v. *Sparkman*, 435 U.S. 349, 356 (1978). Nor is a judge stripped of this protection when he conducts proceedings that lack the full-blown procedural safeguards associated with trials or required by due process. *Id.* at 355, 360-363.

In *Bradley* v. *Fisher*, *supra*, this Court addressed a claim for damages against George P. Fisher, a District of Columbia judge, by Joseph H. Bradley, a lawyer who had represented John H. Suratt, charged with the murder of President Lincoln. After the jury was unable to reach a verdict in the Suratt trial, Judge Fisher discharged the jury and summarily struck Bradley's name from the roll of attorneys of the Supreme Court of the District of Columbia, based on an incident that had occurred during the trial.

Affirming the judgment below in favor of Judge Fisher, this Court held that a federal judge may not be held accountable in damages for a judicial act taken within his court's jurisdiction. Such immunity applies, the Court concluded (80 U.S. (13 Wall.) at 347), "however erroneous the [judge's] act may have been, and however injurious in its consequences it may have proved to the plaintiff." The Court added (*ibid.*) that "this exemption of the judges from civil liability [cannot] be affected by the motives with which their judicial acts are performed."

The *Bradley* Court explained that judges must have absolute immunity in order to ensure the proper functioning of the judicial process. The Court noted (80 U.S. (13 Wall.) at 348) that "[c]ontroversies involving not merely great pecuniary interests, but the liability and character of the parties, and consequently exciting the deepest feelings, are being constantly determined in [the] courts." "Yet," the Court observed (*ibid.*), "it is precisely in this class of cases that the losing party feels most keenly the decision against him, and most readily accepts anything but the soundness of the decision in explanation of the action of the judge. Just in proportion to the strength of his convictions of the correctness of his own view of the case is he apt to complain of the judgment against him, and from complaints of the judgment to pass to the ascription of improper motives to the judge." The Court therefore concluded (*id.* at 347):

> [I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to every one who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful.

In *Pierson* v. *Ray*, 386 U.S. 547 (1967), the Court held that the same absolute immunity shielded a municipal police judge who was sued for damages under 42 U.S.C. 1983 by clergymen who alleged that the judge had unconstitutionally convicted them for a peaceful protest of racial segregation. Writing for the Court, Chief Justice Warren stated (386 U.S. at 554) that common law judicial immunity applied in suits under Section 1983 and again stressed that such immunity was essential to protect the integrity of the judicial process.

The Court once more adhered to these principles in *Stump* v. *Sparkman*, 435 U.S. 349 (1978), which held that an Indiana judge was immune from suit for damages for ordering the sterilization of a teenage girl in an ex parte proceeding, without a hearing, without notice to the girl, and without the appointment of a guardian ad litem. This Court found "no merit to [the] argument that the informality with which [the judge] proceeded rendered his action nonjudicial and deprived him of his absolute immunity" (*id.* at 362-363 (footnote omitted)). Indeed, the Court approvingly described a Fifth Circuit decision extending absolute immunity to a state judge who, at the time of the contested action (jailing a defendant's parents for contempt when they allegedly entered his office to deliver fresh clothes for their son), " 'was not in his judge's robes, * * * was not in the courtroom itself, and * * * may well have violated state and/or federal procedural requirements regarding

contempt citations.'" *Id.* at 361, quoting *McAlester* v. *Brown*, 469 F.2d 1280, 1282 (1972).

The *Stump* Court also found that neither the ex parte nature of the proceedings nor the insulation of the judge's decision from appellate correction altered the settled rule of absolute immunity (435 U.S. at 363 n.12):

> Courts and judges often act *ex parte*. They issue search warrants in this manner, for example, often without any "case" having been instituted, without any "case" ever being instituted, and without the issuance of the warrant being subject to appeal. Yet it would not destroy a judge's immunity if it is alleged and offer of proof is made that in issuing a warrant he acted erroneously and without principle.

2. The same immunity enjoyed by judges has been extended to others who perform quasi-judicial functions. "[This Court's] cases have followed a 'functional' approach to immunity law." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 810 (1982); see also *Briscoe* v. *LaHue*, 460 U.S. 325, 342 (1983). Immunity results from function, not from rank or title or "location within the Government." *Butz* v. *Economou*, 438 U.S. 478, 511 (1978). "Judges have absolute immunity * * * because of the special nature of their responsibilities." *Ibid.* See also *Harlow* v. *Fitzgerald*, 457 U.S. at 810-811 (emphasis added) ("We have recognized that the *judicial* * * * *function*[] require[s] absolute immunity."). Accordingly, absolute immunity has been extended to those who, while not judges in rank or title, perform functions broadly comparable to those of a judge.

The immunity of grand jurors, for example, has roots nearly as deep as that of judges. *Imbler* v. *Pachtman*, 424 U.S. 409, 423 n.20 (1976). This immunity is based on "the functional comparability of their judgments to those of a judge." *Ibid*; see also *Butz* v. *Economou*, 438 U.S. at 509-510. Yet grand jury proceedings are characterized by few of the procedural safeguards associated with trials and most other court proceedings. They are secret [10] and nonadversarial; [11] they are not governed by the rules of evidence or procedure; [12] and their decisions are largely immune from any type of judicial review. See, *e.g.*, *United States* v. *Calandra*, 414 U.S. 338, 345 (1974); *Lawn* v. *United States*, 355 U.S. 339 (1958); *Costello* v. *United States*, 350 U.S. 359 (1956).

Federal hearing examiners and administrative law judges have likewise been recognized to possess absolute immunity because "[t]here can be little doubt that the role of the modern federal hearing examiner or administrative law judge * * * is 'functionally comparable' to that of a judge." *Butz* v. *Economou*, 438 U.S. at 508-514. In reaching this conclusion, the Court cited both the "fractious" quality of much administrative litigation (*id.* at 513) and the procedural safeguards in the Administrative Procedure Act, 5 U.S.C. (& Supp. I) 551 *et seq.* However, the Court did not indicate that such safeguards were essential to its decision—a matter we will discuss in greater detail (pages 28-30, *infra*).

In accordance with the principles laid down in this Court's decisions, the courts of appeals have held that other officials performing quasi-judicial roles are

---

[10] Fed. R. Crim. P. 6(e)(2) and (3).

[11] *United States* v. *Calandra*, 414 U.S. 338, 343-344 (1974).

[12] *Calandra*, 414 U.S. at 343.

shielded by absolute immunity. Perhaps most relevant for present purposes are parole board members, who, like IDC members, adjudicate large numbers of prisoner cases. As the Ninth Circuit observed in *Sellars* v. *Procunier*, 641 F.2d 1295, 1303, cert. denied, 454 U.S. 1102 (1981):

> We believe that parole board officials perform functionally comparable tasks to judges when they decide to grant, deny, or revoke parole. The daily task of both judges and parole board officials is the adjudication of specific cases or controversies. Their duty is often the same: to render impartial decisions in cases and controversies that excite strong feelings because the litigant's liberty is at stake. They face the same risk of constant unfounded suits by those disappointed by the parole board's decisions.
>
> * * * * *
>
> * * * If parole board officials had to anticipate that each time they rejected a prisoner's application for parole, they would have to defend that decision in federal court, their already difficult task of balancing the risk involved in releasing a prisoner whose rehabilitation is uncertain against the public's right to safety would become almost impossible. Furthermore, time spent in depositions and on the witness stand defending their actions would leave these overburdened public servants with even less time to perform their crucial tasks.

Accord, *Trotter* v. *Klincar*, 748 F.2d 1177, 1181-1183 (7th Cir. 1984); *Evans* v. *Dillahunty*, 711 F.2d 828, 830-831 (8th Cir. 1983); *United States ex rel. Powell* v. *Irving*, 684 F.2d 494 (7th Cir. 1982); *Douglas* v. *Muncy*, 570 F.2d 499 (4th Cir. 1978); *Johnson* v. *Wells*, 566 F.2d 1016 (5th Cir. 1978); *Thompson* v.

Burke, 556 F.2d 231, 237-240 (3d Cir. 1977) (absolute immunity for "adjudicatory" but not "administrative" functions); *Pope* v. *Chew*, 521 F.2d 400 (4th Cir. 1975); *Cruz* v. *Skelton*, 502 F.2d 1101 (5th Cir. 1974).

3. So great is the need to insulate judicial and quasi-judicial processes from extraneous influences that this Court has extended absolute immunity to essential participants in the judicial process—such as prosecutors and witnesses—who perform roles very different from that of a judge.

In *Yaselli* v. *Goff*, 275 U.S. 503 (1927), the Court, in a per curiam opinion, affirmed a decision of the Second Circuit holding that a federal prosecutor was absolutely immune from suit for damages for malicious prosecution. *Yaselli* v. *Goff*, 12 F.2d 396 (1926). In *Imbler* v. *Pachtman*, 424 U.S. 409 (1976), similar immunity was extended to a state prosecutor who was sued for allegedly procuring a conviction by knowingly introducing perjured testimony and suppressing exculpatory evidence. Echoing the reasoning of its prior decisions on judicial immunity, the Court explained (*id.* at 424-426 (citations omitted)):

> A prosecutor is duty bound to exercise his best judgment both in deciding which suits to bring and in conducting them in court. The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages. Such suits could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate. Further, if the prosecutor could be made to answer in court each time such a person charged

him with wrongdoing, his energy and attention would be diverted from the pressing duty of enforcing the criminal law.

> Moreover, suits that survived the pleadings would pose substantial danger of liability even to the honest prosecutor. * * * Frequently acting under serious constraints of time and even information, a prosecutor inevitably makes many decisions that could engender colorable claims of constitutional deprivation. Defending these decisions, often years after they were made, could impose unique and intolerable burdens upon a prosecutor responsible annually for hundreds of indictments and trials.

In holding that prosecutors are clothed with absolute immunity comparable to that of judges, the Court was surely aware that prosecutorial decisionmaking is not characterized by any of the procedural formalities of trials. For example, in deciding whether to present a case to a grand jury, a prosecutor exercises broad and generally unreviewable discretion. See *Heckler* v. *Chaney*, No. 83-1878 (Mar. 20, 1985), slip op. 9 (citing cases). Nor is he bound by procedural or evidentiary rules. The Court must also have been aware that the opportunity to challenge a conviction on direct appeal or collateral attack offers no sure redress for many commonly alleged types of prosecutorial abuse, including the wrongs claimed in *Imbler* itself.

Witnesses, including police officers, are likewise "integral parts of the judicial process" and are accordingly shielded by absolute immunity as well. *Briscoe* v. *LaHue*, 460 U.S. at 335. As the Court noted in *Briscoe* (*id.* at 343), "[s]ubjecting government officials, such as police officers, to damages liability under § 1983 for their testimony might under-

mine not only their contribution to the judicial process but also the effective performance of their other public duties."

4. In sum, this Court's cases make clear that absolute immunity from suit for damages protects judges, officials performing quasi-judicial functions, and persons who play integral parts in the judicial process. The central focus of these cases has been on the functions performed by the individuals seeking immunity and their practical need for immunity, not on their ranks or titles. Nor has the focus been on the procedural formality of their activities, as is illustrated by *Stump* and the cases recognizing absolute immunity for grand jurors and prosecutors. The Court's cases teach that absolute quasi-judicial immunity shields an official if (a) he performs an adjudicatory function comparable to that of a judge, (b) this function is of sufficiently great public importance, and (c) the proper performance of that function would be subverted if the official were subject to individual suit for damages.

B. Institution Discipline Committee Members Perform A Vital Quasi-Judicial Function That Would Be Seriously Impaired Without The Protection Of Absolute Immunity From Personal Damages Liability

1. a. Members of an Institution Discipline Committee perform what is indubitably a quasi-judicial function, and accordingly they are entitled, while serving in that capacity,[13] to the same immunity as

---

[13] This Court has held that prison officials have only qualified immunity when performing the administrative task of handling prisoner mail. *Procunier* v. *Navarette*, 434 U.S. 555 (1978). That holding does not control the present case, which concerns the immunity of prison officials performing the

judges, grand jurors, prosecutors, and administrative law judges. As the dissenting judge below observed (Pet. App. 22a), "IDC members are involved in the classic judicial function: they are required to determine whether an accused person is guilty or innocent of the charges brought against him." See BOP Policy Statement ¶ 9(b) (J.A. 36); see also 28 C.F.R. 541.16 (c); *Wolff* v. *McDonnell*, 418 U.S. 539, 571 (1974). In carrying out this responsibility, IDC members, like judges and ALJs, hear testimony and receive other proof, assess the credibility of witnesses, weigh the evidence, and render a final written decision.[14] See pages 30-32, *infra*.

---

specialized function of adjudicating disciplinary cases. See, *e.g.*, *Briscoe* v. *LaHue*, 460 U.S. at 342 & n.28 (footnote omitted) ("[I]mmunity analysis rests on functional categories, not on the status of the defendant."); *Harlow* v. *Fitzgerald*, 457 U.S. at 810; *Butz* v. *Economou*, 438 U.S. at 511; *Imbler* v. *Pachtman*, 424 U.S. at 430-431 (prosecutor absolutely immune for prosecutorial, but not necessarily for administrative, activities). See also *Ward* v. *Johnson*, 690 F.2d 1098, 1109 (4th Cir. 1982) (en banc).

Because immunity depends on the particular function being performed by the official at the time of the contested action, respondents' contention (Br. in Opp. 15-17) that petitioners are not entitled to absolute immunity because they had responsibilities in addition to serving on IDCs is clearly misdirected.

[14] Respondents have argued (Br. in Opp. 15-17) that petitioners did not serve in a quasi-judicial capacity because one of the IDC members allegedly participated in the investigation, because the IDC members questioned respondents at the hearings, and because the IDC in effect initiated new charges against respondents during the course of the proceedings or deliberations. We do not agree that these activities are necessarily incompatible with a quasi-judicial role. For example, grand juries, which are quasi-judicial bodies, conduct investigations and make charging decisions; and both grand jurors and trial judges routinely question witnesses. In any event, the activities claimed by respondents to lie beyond the bounds of quasi-judicial behavior did not form the basis for the due process violations found in this case and are thus irrelevant for present purposes.

b. The societal importance of this dispute resolution function is readily apparent. As the Court has recognized, "[t]he administration of a prison * * * is 'at best an extraordinarily difficult undertaking.'" *Hudson* v. *Palmer*, No. 82-1630 (July 3, 1984), slip op. 9, quoting *Wolff* v. *McDonnell*, 418 U.S. at 566. See also *Hewitt* v. *Helms*, 459 U.S. 460, 467 (1983). "Prisons, by definition, are places of involuntary confinement of persons who have a demonstrated proclivity for antisocial, criminal, and often violent conduct." *Hudson* v. *Palmer*, slip op. 8. "Prison life, and relations between the inmates themselves and between the inmates and prison officials or staff, contain the ever-present potential for violent confrontation and conflagration." *Jones* v. *North Carolina Prisoners' Labor Union*, 433 U.S. 119, 132 (1977). Thus, "central to all other corrections goals is the institutional consideration of internal security." *Pell* v. *Procunier*, 417 U.S. 817, 823 (1974). However, maintaining order, safety, and discipline in a prison is a formidable task, as events in recent years have dramatically illustrated.

Maintaining prison security demands a system of inmate discipline that is firm, fair, and unhesitating. At times it is imperative that inmates who commit infractions threatening security be removed from the general prison population. Infractions must also be punished for deterrent purposes. If this system breaks down because members of disciplinary tribunals are fearful of retaliatory suits for damages, the safety of the prisoners, prison officials, and others

may be jeopardized. Preservation of this system is a matter of high public importance that fully justifies absolute immunity for disciplinary tribunal members.

c. Finally, there can be no serious doubt that the effective functioning of prison disciplinary tribunals would be very seriously impaired if members were not protected by absolute immunity. IDC members would face a severe threat of harassing and intimidating litigation—a threat fully comparable to that confronted by judges, grand jurors, and prosecutors and, in our judgment, far more severe than that faced by most ALJs.

IDC adjudications occur in a setting in which tensions and the potential for retaliation frequently run high. As the Court has noted (*Wolff* v. *McDonnell*, 418 U.S. at 562), prison disciplinary proceedings take place against a background in which prison officials and inmates "co-exist in direct and intimate contact. Tension between them is unremitting. Frustration, resentment, and despair are commonplace." "The reality is that disciplinary hearings and the imposition of disagreeable sanctions necessarily involve confrontations between inmates and authority * * *. Retaliation is much more than a theoretical possibility." *Ibid.* In some instances, the retaliatory urge is so great that physical force is used. If prisoners are empowered to strike out against IDC members by suing them personally for damages based upon alleged procedural defects in the disciplinary proceedings, "[s]uch suits could be expected with some frequency" (*Imbler* v. *Pachtman*, 424 U.S. at 425). The urge to turn the tables on prison officials—to make *them* the accused and to disrupt *their* personal lives—will frequently prove irresistible.[15]

[15] This concern is especially great in the case of federal prison disciplinary tribunals, because prisoners are generally barred by sovereign immunity from suing the United States or the Bureau of Prisons for damages. Thus, IDC members will bear the full brunt of the prisoners' resentment.

The threat of retaliatory and harassing litigation is particularly severe because prisoners as a group are prodigious and indiscriminate litigators.[16] The factors that normally deter the filing of frivolous lawsuits—such as court costs, assessment of attorney's fees, counterclaims for malicious prosecution, unfamiliarity with court procedures, and the time needed to conduct litigation—are notably absent in the case of many prisoners.

[16] For example, in the year ending June 30, 1984, prisoner suits (591 cases) comprised 35% of the Seventh Circuit's civil docket (1649 cases) and 26% of its entire docket (2254 cases). Administrative Office, U.S. Courts, *Director's Annual Report* Table 8-7 (1984).

There is no merit to respondents' argument (Br. in Opp. 18-19) that prison officials adjudicating disciplinary cases have been deprived of absolute immunity against suits for damages under Seventh Circuit precedent since *Chapman* v. *Kleindienst*, 507 F.2d 1246 (7th Cir. 1974), and that this liability has not resulted in many prisoner suits. *Chapman* merely held (*id.* at 1249 n.4) that such an official could be sued under *Barr* v. *Matteo*, 360 U.S. 564 (1959), if he was not acting within the outer perimeter of his official duties. Petitioners in this case would be absolutely immune under this standard. Not until the present case and *Redding* v. *Fairman*, 717 F.2d 1105, 1117 (7th Cir. 1983), cert. denied, No. 83-980 (Feb. 21, 1984) (state prison), did the Seventh Circuit reject absolute immunity for officials who adjudicate disciplinary cases in adult correctional facilities. But see *Chavis* v. *Rowe*, 643 F.2d 1281, 1288 (7th Cir.), cert. denied, 454 U.S. 907 (1981) (stating that member of state prison disciplinary committee has qualified immunity; no discussion of absolute immunity); *Hayes* v. *Thompson*, 637 F.2d 483, 489-490 (7th Cir. 1980) (same); *Mary & Crystal* v. *Ramsden*, 635 F.2d 590 (7th Cir. 1980) (only qualified immunity for members of disciplinary committee at juvenile facility).

Furthermore, the "flexible and variable" nature of the requirements imposed by the Due Process Clause (see *Hewitt* v. *Helms*, 459 U.S. at 472) afford prisoners ample opportunity to assert due process claims arising from most if not all disciplinary proceedings. It is clear that prison disciplinary proceedings need not be conducted like trials. *Ibid.*; *Wolff* v. *McDonnell*, 418 U.S. at 560. But the flexible nature of due process requirements will permit prisoners to argue that, under the circumstances of their case, the disciplinary committee departed too far from trial procedures in this or that particular. Thus, every IDC ruling adverse to the prisoner—*e.g.*, every piece of evidence admitted or excluded, every continuance granted or denied, every unfavorable finding, and every punishment meted out—will be a potential count in a *Bivens* suit seeking extravagant sums in compensatory and punitive damages. See *Imbler* v. *Pachtman*, 424 U.S. at 425. More than 30,000 IDC hearings are held each year, and in almost half of these cases the sanction of disciplinary segregation is imposed. Consequently, the potential for retaliatory and harassing lawsuits is vast.

If absolute immunity is denied, the predictable result will be most unfortunate, not only for IDC members, but also for the prison system and the courts. Exposing IDC members to a civil suit for damages "would seriously cripple" (*Spalding* v. *Vilas*, 161 U.S. 483, 498 (1896)) the viability of the prison dispute resolution system by threatening the freedom and independence of these decisionmakers. Members of prison disciplinary tribunals are persons of modest means. In many cases, an adverse judgment of the size typically sought in a *Bivens* suit would result in the loss of their homes and savings. If IDC members

are suable for damages for their every procedural misstep, only the most stalwart or foolhardy prison officials would willingly serve on IDCs. *Harlow*, 457 U.S. at 814; *Economou*, 438 U.S. at 509-510; *Ward* v. *Johnson*, 690 F.2d at 1108; *Gregoire* v. *Biddle*, 177 F.2d 579, 581 (2d Cir. 1948), cert. denied, 339 U.S. 949 (1950); see *Taylor* v. *Kavanagh*, 640 F.2d 450 (2d Cir. 1981). And those who do serve would inevitably be influenced in their rulings by the threat of retaliatory lawsuits.

The Fourth Circuit has aptly summarized the need to extend absolute immunity to prison officials who adjudicate inmate disciplinary cases (*Ward* v. *Johnson*, 690 F.2d 1098, 1108 (1982) (en banc) (footnote omitted)):[17]

> The proclivities of prison inmates to engage in litigation are prodigious. It has been estimated that between 30 and 40 percent of our appeals in this Circuit concern proceedings by prison inmates. That burden on the courts will be im-

[17] In *Ward*, the court held that absolute immunity barred suit against the chairman of the state prison Adjustment Committee, a body similar to a federal prison IDC, for alleged constitutional defects in the Committee's proceedings. Accord, *Segarra* v. *McDade*, 706 F.2d 1301, 1305 (4th Cir. 1983); contra, *King* v. *Wells*, No. 83-1705 (6th Cir. Apr. 12, 1985), slip op. 9; *Jihaad* v. *O'Brien*, 645 F.2d 556 (6th Cir. 1981); cf. *King* v. *Higgins*, 702 F.2d 18, 20 (1st Cir. 1983), cert. denied, 464 U.S. 965 (1983) (court agrees defendant has qualified immunity; no claim or discussion of absolute immunity). The weight of district court authority also supports absolute immunity for prison disciplinary officials. *Riley* v. *Smith*, 570 F. Supp. 522, 526 (E.D. Mich. 1983); *Anderson* v. *Luther*, 521 F. Supp. 91, 97 (N.D. Ill. 1981); *Breedlove* v. *Cripe*, 511 F. Supp. 467 (N.D. Tex. 1981); *Fitchette* v. *Collins*, 402 F. Supp. 147 (D. Md. 1975); contra, *Hilliard* v. *Scully*, 537 F. Supp. 1084, 1088-1089 (S.D.N.Y. 1982); cf. *Cavey* v. *Levine*, 435 F. Supp. 475, 483 (D. Md. 1977).

measurably increased by allowing suits arising out of disciplinary hearings which have been as carefully structured as this one has been in order to provide every reasonable "safeguard" of an inmate's right to a fair and impartial hearing within the prison context * * *.

Moreover, lawsuits, whether meritorious or not, are always burdensome, harassing, and time-consuming. It is difficult enough to secure qualified prison employees. That task will be made more difficult, particularly in securing officials to serve on Adjustment Committees, if, however, fair they try to be, such officials are subjected to the hazards of repeated litigation by disappointed defendants in disciplinary hearings. Ordinarily, prison officials are not generously rewarded for their services and the threat of an award against them personally would be a hazard many would feel themselves not justified in risking. The prison system itself will also likely be seriously hampered by a denial to the members of the Adjustment Committee [of] absolute immunity, since prison employees will unquestionably be resistant to accepting appointment as members of an Adjustment Committee if acceptance entails the serious hazard of being sued personally for their actions strictly as members of the Committee

2. The principal argument advanced by respondents and by those judges who have concluded that IDC members should not have absolute immunity is that IDC adjudications lack the procedural formality needed to qualify as quasi-judicial proceedings. Br. in Opp. 13-17; Pet. App. 11a-13a (Cudahy, J., concurring); *Ward* v. *Johnson*, 690 F.2d 1098, 1115 (4th Cir. 1982) (Winter, C.J., dissenting). This argument misapprehends the relevant legal question and inaccurately characterizes IDC proceedings.

To be sure, in *Butz* v. *Economou*, *supra*, this Court supported its conclusion that ALJs perform a role "'functionally comparable' to that of a judge" by noting (438 U.S. at 513) that "federal administrative law requires that agency adjudication contain many of the same safeguards as are available in the judicial process." But *Economou* did not suggest that only those adjudicatory proceedings with trial-type procedures and safeguards can qualify for absolute immunity. The most that can be said of *Economou* is that it does not *require* absolute immunity for IDC members, not that it forecloses such immunity.

This Court's immunity and due process decisions refute the proposition that procedural formality is a prerequisite for absolute judicial or quasi-judicial immunity. If absolute immunity depended on the presence of trial-type procedures and safeguards, judges conducting many summary and ex parte proceedings, such as the issuance of search warrants or temporary restraining orders, would not be clothed with absolute immunity. But see *Stump* v. *Sparkman*, 435 U.S. at 362-363 & n.12; pages 15-16, *supra*. Nor would absolute immunity shield grand jury proceedings or prosecutorial decisionmaking. But see *Imbler* v. *Pachtman*, 424 U.S. at 420-424; pages 17, 20, *supra*. What is critical under this Court's immunity decisions is not the formality of the procedures but the nature of the function performed by the official claiming absolute immunity and the need for such immunity to permit the proper discharge of that function. IDC proceedings fully meet these requirements.

Due process principles implicitly point to the same conclusion by recognizing that practicalities may justify adjudications lacking trial-type procedures and

safeguards. See, *e.g.*, *Hewitt* v. *Helms*, 459 U.S. at 475; *Gerstein* v. *Pugh*, 420 U.S. 103 (1975). Yet a judicial decision—such as the authorization of a search warrant, the setting of bail, or the issuance of a temporary restraining order—is no less judicial because the situation demands expedition and procedural informality. This Court has held that the practicalities of prison administration justify procedural informality in the conduct of prison disciplinary proceedings. *Wolff* v. *McDonnell*, 418 U.S. at 556-572. Introducing more elaborate trial-type procedures—in essence, recasting prison disciplinary tribunals in the mold of formal administrative tribunals—would be inimical to the needs of prison discipline and security. As the Court implicitly recognized in *Wolff*, such formalization would "very likely raise the level of confrontation between staff and inmate" (418 U.S. at 563), undermine rehabilitative goals (*ibid.*), cause undue delay and administrative problems (*id.* at 570-571), and compromise "personal security in the institution" (*id.* at 563). In view of these factors, it would make no sense for the Court to hold that IDC procedures, which fully comply with and indeed exceed what *Wolff* requires, are not sufficiently "judicial" to qualify for absolute immunity. Not only would such a holding be doctrinally inconsistent, but it also would create great pressure, quite possibly irresistible, for increased formalization of IDC procedures. Thus *Wolff*, as a practical matter, would be undone.

In any event, contrary to respondents' contention, IDC proceedings contain ample safeguards to ensure that constitutional errors are avoided or corrected.[18]

[18] BOP regulations governing inmate discipline have been amplified since 1975, but even at that time the regulations "were fairly extensive." Pet. App. 24a (Celebrezze, J., dissenting) (footnote omitted). Compare BOP Policy Statement (J.A. 25-49) with 28 C.F.R. 541.10-541.23 (partially reprinted at Pet. App. 37a-60a). Respondents' disciplinary hearing occurred less than one year after the decision in *Wolff* v. *McDonnell*, 418 U.S. 539 (1974), and only six months after promulgation of the first regulations governing the procedures at IDC hearings.

To promote impartial adjudications, no staff member who reports or investigates an incident may sit on an IDC considering the charge. BOP Policy Statement ¶ 9(a) (J.A. 35-36); see 28 C.F.R. 541.16(b) (Pet. App. 42a). In addition, the chairman and at least one other member of the committee must have the rank of department head or higher, thus ensuring the stature and independence of the decisionmakers. *Ibid.*; see also note 4, *supra*.[19]

An inmate accused of misconduct is entitled to prior notice of all charges at least 24 hours before his hearing. Charges that are not serious may be resolved informally, while serious charges must be referred to the IDC. 28 C.F.R. 541.15; Pet. App. 38a-42a. After referral of the case to the IDC, the inmate may select a correctional staff member as his advocate, and the IDC may grant a continuance to allow the advocate to prepare. BOP Policy Statement ¶ 9(c)(1) and (2) (J.A. 36-37); see 28 C.F.R. 541.17(a) and (b) (Pet. App. 43a-44a). At the hearing, the inmate has the right to make a state-

[19] Since June 1, 1983, only BOP personnel who have passed a written examination on IDC procedures are certified to serve on an IDC. Maintenance of the certification is a critical element in the job performance standards of eligible officials, and failure to pass the written examination after two opportunities is a ground for an unsatisfactory performance appraisal.

ment, to present documentary evidence, and, under certain circumstances, to call witnesses. BOP Policy Statement ¶ 9(c)(3) (J.A. 37); see 28 C.F.R. 541.17(c) (Pet. App. 44a-45a). If the IDC refuses to call a witness requested by the inmate, the reasons must be reflected in the record. *Ibid.* The inmate is generally entitled to be present at all phases of the hearing except the deliberations. BOP Policy Statement ¶ 9(c)(5) (J.A. 38); see 28 C.F.R. 541.17(d) (Pet. App. 45a-46a). The IDC is required to keep a detailed record of its actions sufficient to show, inter alia, the Committee's findings and decision, the specific evidence on which it relied, and an explanation for the sanctions imposed. BOP Policy Statement ¶ 9(c)(4) (J.A. 37); see 28 C.F.R. 541.17(g) (Pet. App. 47a).

As an additional safeguard, inmates may seek administrative review at three levels—from the warden, the regional director, and the assistant director (general counsel) of the Bureau of Prisons. BOP Policy Statement ¶ 10 (J.A. 40-41); see 28 C.F.R. 541.19 (Pet. App. 48a-49a) and 28 C.F.R. Pt. 542. This case clearly illustrates that an inmate's right to administrative review is not an empty one. The warden ordered respondents' release from administrative segregation and restoration of their forfeited good time, and the Regional Director ordered respondents' disciplinary records expunged. As Judge Celebrezze noted (Pet. App. 26a), "the efficiency of the review is demonstrated by the decision to modify, and, ultimately, to reverse the IDC's decision in this case." Finally, a prisoner dissatisfied with the disposition of his administrative appeals may seek review in federal court under 28 U.S.C. 2241. See, *e.g.*, *Prieser* v. *Rodriguez*, 411 U.S. 475, 487-488 (1973) (state habeas corpus); *Johnson* v. *Avery*, 393 U.S. 483 (1969) (state habeas corpus); *Dawson* v. *Smith*, 719 F.2d 896 (7th Cir. 1983); *Jackson* v. *Carlson*, 707 F.2d 943 (7th Cir.), cert. denied, 464 U.S. 861 (1983); *Kyle* v. *Hanberry*, 677 F.2d 1386 (11th Cir. 1982). These procedures provide a fully effective remedy for any procedural deficiencies in IDC cases and obviate any need for personal damages actions to protect inmates' procedural rights.

3. A rule recognizing absolute immunity for IDC members is not inconsistent with *Wood* v. *Strickland*, 420 U.S. 308 (1975), which held that school board members sued under 42 U.S.C 1983 for improperly expelling or suspending students were entitled to qualified, but not absolute, immunity.[20] In *Wood*, no claim was made that the school board members were performing a quasi-judicial function; nor was the claim of absolute immunity restricted to activities

[20] The court below summarily rejected absolute immunity on the strength of its own precedents holding, in reliance on *Wood*, that state correctional officials who serve on disciplinary committees enjoy only qualified immunity. Pet. App. 1a-2a; see page 8, *supra*. However, none of these prior decisions discussed the question of absolute immunity in any detail. The initial Seventh Circuit decision (and the only one containing any analysis of the absolute immunity issue) was *Mary & Crystal* v. *Ramsden*, 635 F.2d at 600, which merely stated that members of the disciplinary committee at a state juvenile facility performed a function "more similar to that of the school board members in *Wood v. Strickland*, 420 U.S. 308 * * * (1975), than to that of a judge." See also Pet. App. 10a-11a (Cudahy, J., concurring; relying on *Wood*); *Ward* v. *Johnson*, 690 F.2d at 1115-1116 (Winter, C.J., dissenting; relying on *Wood*). The only other court of appeals decisions denying absolute immunity to prison disciplinary officials, see note 17, *supra*, are similarly devoid of supporting analysis.

that might be so characterized. Instead, the school board members argued broadly that they were absolutely immune for the performance of all "discretionary duties." Pet. Br. 43. Moreover, in rejecting this blanket claim (cf. *Harlow* v. *Fitzgerald*, 457 U.S. at 808-809, 811-812), the Court acted against a common-law background altogether dissimilar from that present here. The *Wood* Court found (420 U.S. at 318 & n.9) that school officials had frequently been sued under state law and that state courts had generally extended immunity for "all good-faith, nonmalicious actions" taken by school officials "to fulfill their official duties." The Court concluded (*id.* at 320) that such qualified immunity should be available under Section 1983 as well but that "at the same time, the judgment implicit in this common-law development is that absolute immunity would not be justified since it would not sufficiently increase the ability of school officials to exercise their discretion in a forthright manner."

In our judgment, there can be no meaningful analogy between *Wood* and cases involving prison disciplinary proceedings. "The prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." *Ingraham* v. *Wright*, 430 U.S. 651, 669 (1977); see also Pet. App. 21a n.5 (Celebrezze, J., dissenting). Schoolchildren and their parents do not have the same motives, means, or proclivity to institute and maintain harassing lawsuits as do prisoners. In addition, the Court in *Wood* was faced with the judgment of state courts, after many years of experience, that qualified immunity was sufficient to protect school officials from suits for damages. The common law experience provides no comparable

assurances regarding prisoner suits,[21] and we believe, as previously noted (pages 24-28, *supra*), that IDC proceedings have an enormous potential for generating harassing and retaliatory litigation.[22]

4. Finally, there is no force to the argument that IDC members do not require absolute immunity because they "are accorded adequate protection against harassment by the enlarged safeguards of qualified

---

[21] Until relatively recently, many obstacles blocked prisoner suits against prison officials. Federal prison officials were (and are) absolutely immune against state tort claims (*Barr* v. *Matteo*, 360 U.S. 564 (1959); *Spalding* v. *Vilas*, 161 U.S. 483 (1896); see W. Prosser, *Law of Torts* § 132, at 988 (4th ed. 1971)) and thus were effectively immune from damages suits of any kind prior to *Bivens*. State officials often had similar protection under statutes barring suits by prisoners. See Note, *Prisoners' Remedies for Mistreatment*, 59 Yale L.J. 800, 801 & n.4 (1950). Prison officials were also held immune under the doctrine of administrative discretion (*id.* at 801 & n.5) and the "conviction held with virtual unanimity by the courts that it [was] beyond their power to review the internal management of the prison system." Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 Yale L.J. 506, 508 (1963) (footnotes omitted).

[22] Furthermore, if relevant, the procedures followed by the school officials in *Wood* share none of the formality of IDC proceedings. Compare 420 U.S. at 312-313 with pages 30-33, *supra*. The same appears to have been true of the disciplinary proceeding in the juvenile facility in *Mary & Crystal* v. *Ramsden*, *supra*, the Seventh Circuit case on which the decision below ultimately rests (see note 20, *supra*). For example, the juveniles in *Mary & Crystal* were not given written notice of the charges against them or informed about the conduct of the hearing or the procedure for appealing an adverse decision. Nor were the juveniles allowed to have an advocate or to present witnesses on their behalf. 635 F.2d at 594 n.1.

immunity as announced in *Harlow*." Pet. App. 15a (Cudahy, J., concurring). See also *Ward* v. *Johnson*, 690 F.2d at 1116-1117 (Winter, C.J., dissenting); Br. in Opp. 19-22. Qualified immunity, even as recast in *Harlow*, would provide insufficient protection for IDC members. IDC members would still bear the burden and expense of demonstrating that they did not violate any clearly established constitutional rights. Where material facts are disputed, they would still have to undergo potentially burdensome and expensive discovery and a trial. And they would bear the risk that a judge or jury, with the benefit of hindsight and time for careful study years after the event, might conclude that clearly established rights were violated.

The short answer to the argument that qualified immunity is sufficient for IDC members is that the same could be said for judges, administrative law judges, grand jurors, and prosecutors, all of whom face the same threats and should therefore enjoy the same immunity. Unless protected by absolute immunity, judges, administrative law judges, grand jurors, and prosecutors would be swamped and demoralized by suits brought by disgruntled litigants, even if it appeared likely that all or most of those suits would ultimately be dismissed on qualified immunity grounds. The psychological burden, as well as the real economic effects, of defending against such suits would be considerable. The same is true for IDC members, who need and deserve the same protection if the existing carefully balanced and unquestionably beneficial prison disciplinary system is to continue in its present form.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

KENNETH S. GELLER
Deputy Solicitor General

SAMUEL A. ALITO, JR.
Assistant to the Solicitor General

GLORIA C. PHARES
Attorney

MAY 1985

☆ U. S. GOVERNMENT PRINTING OFFICE: 1985 461551 10215